IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

I.T.R. No.52 of 1991
Date of decision: 14.11.2006

The Commissioner of Income Tax, Patiala.

---Applicant

Vs.

M/s Major Tikka Khushwant Singh, Sangrur.

-----Respondent

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE RAJESH BINDAL

Present: Dr. N.L. Sharda, Advocate
for the revenue.

ORDER:

Following question of law has been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh, arising out of its order dated 28.04.1977 in I.T.A. No.819 of 1975-76 in respect of assessment year 1961-62:-

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that there was no valid assessment framed in this case and that the one framed u/s 144 of the I.T. Act, was void ab initio having no legal sanctity behind it?"

The Assessing Officer issued notice of the assessment on 24.02.1970 under Section 148 of the Income-tax Act, 1961 (for short, "the Act") relating to assessment year 1961-62. The assessee did not file return in response thereto. Thereafter, notice under Section 142(1) of Act was issued on 10.10.1973. The assessee took the stand that notice under Section 148 of the Act was never served on him and, therefore, proceedings under Section 147(a) read with section 148 of the Act were not competent as a period of eight years had passed. The assessee, thereafter, did not appear and an order under Section 144 of the Act was passed. The assessee filed a writ petition which was allowed vide judgment of this Court in

Tikka Khushwant Singh ***v.*** ***Commissioner of Income-Tax, Patiala and another*** (1975) 101 ITR 106, holding that the requirement of issuing notice was to be taken as requirement of service of notice. The assessee had also filed an application under Section 146 of the Act, which was dismissed.

On appeal, the Tribunal held that since service of notice was not proved, assessment was liable to be cancelled.

We have heard learned counsel for the revenue and perused the record.

We find that the view taken by this Court in ***Tikka Khushwant Singh***'s case (*supra)*, was reversed by the Full Bench of this Court in ***Jai Hanuman Trading Co. Pvt. Ltd.*** ***v.*** ***CIT*** (1977) 110 ITR 36 and the Hon'ble Supreme Court in ***R.K. Upadhyaya*** ***v.*** ***Shanabhai P. Patel*** (1987) 166 ITR 163 held that requirement under Section 148 of the Act was only of issuing notice and requirement of service of notice within limitation was not required.

Since the judgment of this Court in ***Tikka Khushwant Singh***'s case (*supra)* is inter partes and covers the year in question, the same will be res judicata on the question of the validity of the notice. It was held that notice for reassessment will be valid only if service of notice has been effected on the assessee prior to 1970 and authorities below have found that service had not been effected on the assessee within that period.

In view of above, the question referred is answered against the revenue and in favour of the assessee.

(ADARSH KUMAR GOEL)
JUDGE

November 14, 2006
ashwani

(RAJESH BINDAL)
JUDGE